Supreme Court, U.S.
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No. _____

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In the
SUPREME COURT OF THE
UNITED STATES

In re JOHN L. CORRIGAN

ON PETITION FOR A WRIT OF MANDAMUS
FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

PETITION FOR WRIT OF MANDAMUS

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QUESTIONS PRESENTED

1. Whether Judge Pechman and the Ninth Circuit Court of Appeals denied Petitioner a Fair and Impartial Trial by failing to apply well settled rules of law to the motions for summary judgment and Rule 11.

2. Whether Judge Pechman and the Ninth Circuit Court of Appeals abused their discretion when Rule 11 sanctions were granted in the amount of $10,000 for a first time pro se litigant-violator making $55,000 a year.

3. Whether Judge Pechman and the Ninth Circuit Court of Appeals abused their discretion by failing to recuse Judge Pechman in light of numerous questions about Judge Pechman's bias and prejudice in determinations made by Judge Pechman in a previous, related case.

LIST OF PARTIES

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OPINIONS BELOW

The opinions of the United States District Court, and the United States Court of Appeals for the Ninth Circuit are unreported.

JURISDICTION

The judgment of the United States Court of District Court for the Western District of Washington was entered on July 17, 2007. (App. 5). On appeal to the United States Court of Appeals for the Ninth Circuit the court affirmed the judgment on January 14, 2009. (App. 1) United States Court of Appeals for the Ninth Circuit issued an Order denying the petition for panel rehearing en banc on March 13, 2009. (App. 56)

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

The jurisdiction of this Court is also invoked under 28 U.S.C. §1651(a).

CONSTITUTIONAL PROVISIONS, STATUTES, ORDINANCES, AND REGULATIONS INVOLVED IN THE CASE

The "due process clause" of the 5th Amendment to the U.S. Constitution.

Federal Rules of Civil Procedure, Rule 11(c) Sanctions which provides in pertinent part:

> (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

STATEMENT OF FACTS

1. On December 1, 2004 an arrest warrant was issued for Petitioner for not showing up at a "show cause" hearing issued by Adams County, Ritzville, Washington. On April 19, 2005, the warrant was input into the statewide database and within 24 hours Petitioner was arrested at his home in Auburn, Washington, by three or four King County Sheriff's Deputies

who arrived in three King County Sheriff squad cars.

2. Petitioner filed suit in the United States District Court for Western Washington, seeking damages for U.S.C. §1983 violations against the counties of King and Adams and also other individuals responsible for Petitioner's arrest. The case was handled by the Honorable Marsha J. Pechman – *Corrigan v. Unknown King County Deputy et al*, 05-cv-01727-MJP.

3. On 08/2/2006 Judge Pechman issued an order claiming that the compliant was frivolous, dismissed certain "unknown" defendants without prejudice because they had not been identified, and granted defendants motion for Rule 11 sanctions and defendants motion for summary judgment. (App. 7) Later, on 10/27/2006, the Rule 11 sanction amount was identified as $10,000. (App. 38)

4. Petitioner timely appealed to the Ninth Circuit Court of Appeals on 11/20/2006 under case number 06-35998. A panel of judges affirmed the order and a petition for rehearing en banc was denied.

5. Petitioner sought a Writ of Certiorari with the U.S. Supreme Court on 01/02/2008 under case number 06-35998. Cert was denied on 03/24/2008.

6. Petitioner also filed suit on 11/27/2006 in the United States District Court for Western

Washington, at Seattle after having identified the "unknown" defendants in the above mentioned cause. Again, the case was assigned to the Honorable Pechman – *Corrigan v. Jenks, et al*, 06-cv-01710-MJP.

7. On 02/03/2007 Petitioner submitted a motion to recuse Judge Pechman. The motion was denied 03/09/2007.

8. On 07/17/2007 the case was dismissed for failure to pay the $10,000 sanction imposed in case number C05-1727. (App. 5)

9. A notice of appeal was filed 07/18/2007 with the Ninth Circuit Court of Appeals under case number 07-35584.

10. The appeal was affirmed on 01/14/2009. (App. 1) A motion for rehearing in banc was denied on 03/13/2009. (App. 56)

REASONS FOR GRANTING THE WRIT

I. WRIT DIRECTLY TO U.S. SUPREME COURT

Petitioner contends that the Ninth Circuit (both the district courts and the appellate court) are abusing their judicial power and are denying petitioner a fair and impartial trial. See *Marshall v. Jerrico, Inc.*, 100 S.Ct. 1610, 1613 (1980) (The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases).

Petitioner also contends that this extraordinary writ is necessary to:

- Properly apply appellate jurisdiction relating to abuse of clearly established rules and common law;
- There is no other adequate means to overcome the abuses of the trial court;
- The excessive abuse of discretion actions by Judge Pechman will show that the right to the writ is clear and indisputable; and
- See generally *Mallard v. United States Dist. Court*, 490 U.S. 296, 309 (1989) (noting that "a 'clear abuse of discretion'" may justify issuance of the writ) (quoting *Bankers Life & Cas. Co. v. Holland*, 346 U.S. 379, 383 (1953)).

The writ is submitted to this Court because of questions about the integrity of the Ninth

Circuit. This Court is aware of some of the criticisms complained of in the Ninth Circuit like the Political Liberalism, and the size of the court (with various proposals on how to split the Ninth). See *http://en.wikipedia.org/wiki/Ninth_Circuit_Court_of_Appeals (Controversy: 1) Political Liberalism; and Size of the Court).*

Petitioner also submits the following for concerns about the integrity of the Ninth and why it was necessary to submit this writ directly to this court.

1. Professor Vairo

Professor Vairo is a well respected educator and legal analyst with significant credits to her legal career. (App. 57)

Professor Vario states:

> During the last several years, however, most Ninth Circuit opinions have resulted in an uneven enforcement of the rule. That ambiguity persists today. *Accordingly, Rule 11 practice in the Ninth Circuit remains unpredictable, and the result on appeal is likely to be dictated by the jurisprudential preferences of whoever is sitting on the panel.* [Emphasis added]

Rule 11 Sanctions, Case Law, Perspectives and Preventive Measures, by Georgene M.

Vairo, © 2004, American Bar Association, p. 715. There are no other circuit criticisms. The Ninth was singled out by a well respected legal expert as not always holding to precedent and/or following the rules. It can be clearly shown in this writ that Judge Pechman has openly exceeded the bounds of Rule 11 determinations.

2. Suing Ninth Circuit Judges

A lawsuit has been respectfully filed by petitioner seeking declaratory judgment. The defendants are Ninth Circuit district court and appellate court judges. Judge Pechman is one of those judges. However, the writ would not be able to address the same issues. The issues presented in that lawsuit cannot address the full measure of review relating to this action that petitioner hopes this writ will address. However, the point is not that petitioner is suing judges but: 1) petitioner is trying to address fair trial issues that he feels have been abused by the Ninth circuit; and 2) That suing a number of Ninth circuit judges is another reason that this writ could not be submitted to the Ninth . That is, there could never be any "appearance" of a fair trial if the Ninth ruled on a matter directly affecting their judicial oversight.

3. Corrigan v. Dale, et. al. (App.53)

Dale is an example of how the Ninth denies a fair trial. Petitioner had trouble serving the defendants and requested additional time. The judge refused it. The defendants claimed they were not properly served, and later submitted a summary judgment motion and a Rule 11 Sanction motion. The judge agreed that the defendants were not properly served, granted summary judgment, and awarded sanctions exceeding $10,000.

Petitioner pointed out that if defendants were not properly served, the district court had no jurisdiction to grant summary judgment, nor any jurisdiction to award sanctions exceeding $10,000. Yet, in spite of numerous case law holdings that if the defendants are not properly served then the action is void, the court refused to void the judgment claiming that "service could be waived." (App. 54) This is an extreme abuse of discretion. The district court had no jurisdiction to issue summary judgment or Rule 11 sanctions. See *Shuster v. Conley*, 107 F.R.D. 755 (WD Pa. 1985) (plain language of former Rule 4(j) [now Rule 4(m)] makes dismissal mandatory rather than discretionary). Judge Whaley says it is

acceptable because he also found summary judgment and Rule 11 violations.

> Even though the Court found that service was defective, it also found that Plaintiff's complaint was barred by the statute of limitations and the doctrines of collateral estoppel, claim and issue preclusion, and absolute immunity, and by Plaintiff's failure to show that his conviction and sentence had been invalidated as required by *Heck v. Humphrey*, 512 U.S. 477 (1994).

(App. 55) Even though service was defective and the court did not have jurisdiction to proceed, Judge Whaley did not care that his actions are contrary to law. The issue of service must be determined *prior* to finding fault with petitioner's complaint. *Hickory Travel Systems, Inc. v.TUI AG*, 213 F.R.D. 547 (N.D.Cal. 2003) (if service is insufficient, the court may either dismiss the case or retain jurisdiction but quash service).

This situation would never happen in an honest circuit for the following reasons: 1) there was good cause for extending the time for service and an unbiased court would have extended time to serve – especially for a pro se; 2) the question of service must be properly addressed prior to any subsequent actions by the judge (petitioner actually motioned the court for a clarification of the service issue which the court ignored); and, 3) a claim that

service could be "waived" after summary judgment and a $10,000 sanction is an outrageous abuse of discretion and contrary to law. See *Blaney v. West,* 209 F.3d 1027 (CA 7 Wis 2000) (it is per se abuse of discretion to deny FRCP 60(b)(4) motion when trial court has no jurisdiction over action).

4. Corrigan v. Pflanz, et. al. (App. 55)

Pflanz is another example of the abuse of the law that the Ninth exhibits. This was an action to address the alleged abuse of process exhibited by defendants in two separate Rule 11 motions for sanctions. The Pflanz court - on a motion to dismiss - claimed that there is no separate abuse of process claim relating to a motion for Rule 11. The court stated that any such claim does not provide for an independent lawsuit but rather any such violation must be resolved in the same action. This in spite of the "1993 Advisory Committee Notes for Rule 11" that states:

> Finally, it should be noted that Rule 11 *does not preclude a party from initiating an independent action for malicious prosecution or abuse of process.*
> [Emphasis added]

Other cases were also used to support petitioner's position that were basically ignored by the court. Further, Judge Shea offered

some convoluted basis for a counterclaim under an abuse of process Rule 11 claim that made absolutely no sense.

> Accordingly, in the underlying lawsuits, Plaintiff should have sought leave to file an abuse of process counterclaim pertaining to his allegations that Defendants and defense counsel misused Rule 11.

App. 56. Does this make any sense at all? How is petitioner supposed to convince a judge that just sanctioned him $10,000 – that it is really an abuse of the process and he should sanction the other party instead? See *Cohen v. Lupo*, 927 F.2d 363 (8th Cir. 1991) (moreover, Rule 11 and the tort of malicious prosecution differ in their nature, the elements of the claims, and the potential remedies).

The judge's of the Ninth Circuit can just make up the law to suit their prejudices. This would never happen in a fair circuit.

Petitioner is being denied a fair and impartial trial.

5. Corrigan v. Unknown King County Official.

The case at bar touches on the numerous abuses of discretion:

- at the trial stage;
- at appellate stage,
- at the Rule 11 determination; and

- at the failure of the court to recuse.

This case also illustrates how litigation can escalate because of those abuses. This case was originally about a constitutional issue related to an arrest from a civil infraction. It escalated to: claims of abuse of process relating to Rule 11 sanctions, the case at bar being severed; action for abuse of process (petitioner's arrest), and actions relating to abuses of district court and appellate court judges.

Further, petitioner contends that the case at bar is being unfairly used to enhance abusive judicial sanctions taken against petitioner. In other words, this particular case is being thrown around by the courts and defendants to portray petitioner as an out of control pro se litigant.

II. JUDGE PECHMAN'S ABUSES OF DISCRETION

1. Abuse of the Order.

> This matter comes before the Court on two motions by Defendant Adams County and its employees Sheriff D. Barger and "Unknown County of Adams Official." For ease of reference, these three defendants will be referred to collectively as the "Adams County Defendants."

> First, the Adams County Defendants have moved for summary judgment. Second, the Adams County Defendants have moved for Rule 11 sanctions against Plaintiff.

App. 7.

This statement by Judge Pechman is an egregious abuse of discretion and points to the bias and prejudice exhibited throughout Judge Pechman's order. Consider that the motion for Rule 11 sanctions was made by <u>one</u> defendant – Adams County (App. 42).

> Adams County respectfully requests that its Motion for Sanctions of Attorney Fees and Costs be granted.

App. 52.

However, Judge Pechman tries to subtly add the two other Adams County defendants – Sheriff D. Barger and "Unknown County of Adams Official." Later, Judge Pechman addresses all three defendants for her support of the $10,000 Rule 11 sanctions. (App. 28) The motion was not about Sheriff Barger or the Unknown Adams County Official." This action by Judge Pechman is extreme and outrageous. It is a *sua sponte* abuse of established law that denied Corrigan a due process right to respond and is totally beyond the bounds of a fair and impartial trial.

> When courts raise the Rule 11 issue *sua sponte*, they generally will order a hearing,

> and under the 1993 amendments, they must provide the target with an opportunity to be heard. [Citations omitted]

Rule 11 Sanctions, p. 411. Judge Pechman did not provide petitioner with an opportunity to be heard on defendants Sheriff D. Barger, and "Unknown County of Adams Official." Further, the motion did not address those defendants as part of their motion because even the defendants Sheriff Barger and Unknown County of Adams Official had no basis for claiming a Rule 11 violation. See App. 52 ("Adams County respectfully requests that its Motion for Sanctions of Attorney Fees and Costs be granted)." The sanctions were not about Sheriff Barger and Unknown County of Adams Official but about the ***one*** defendant – Adams County.

Judge Pechman's actions were extreme and an abuse of discretion.

Judge Pechman also set the tone of her entire argument under that abuse of discretion action. This is a clear abuse of Judge Pechman's discretion.

2. Due Process Denied by Both Summary Judgment and Rule 11 Sanctions

Judge Pechman's action in combining the motion for summary judgment and the rule 11 sanctions denied Petitioner due process. The

combination created confusion, made it difficult to address the issues, and confused the issues – like claiming that defendants Sheriff Barger, Unknown County of Adams Official, and Adams County submitted a Rule 11 motion when in fact only defendant - Adams County - did. In this case, it was an abuse of discretion and denied petitioner due process and a fair and impartial trial. See *Healey v. Chelsea Resources, Ltd.*, 947 F.2d 611 (2nd Cir. 1991) (we conclude that especially where, as here, the critical question is the claimant's credibility, it is inappropriate to require that the parties argue jointly the question of sanctions and the merits).

3. Claims Were Not Frivolous.

Petitioner's claims were not frivolous. They were made after reasonable inquiry and they were supported by well settled rules of law.[1] Petitioner presented two material facts to support his claims relating to the action: 1) the warrant to arrest petitioner was not valid; and 2) the way the arrest was carried out was an abuse of discretion. The purpose of the arrest

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[1] For the most part, the reasonable inquiry came from Police Misconduct, Law and Litigation, 3rd Edition, © 2004 West, a Thomson business.

was based on the civil infraction, escalating to a criminal infraction for not signing the civil infraction. However, the civil infraction could not lead to the criminal infraction – as it did in petitioner's case. See *Stevens v. Rose*, 298 F.3d 880, 883 (9th Cir. 2002) (disputes that are purely civil in nature cannot give rise to probable cause to arrest on criminal charges).[2]

Invalid Warrant

The process to arrest petitioner was instituted prior to the trial court's jurisdiction to initiate the process. The Superior Court (appellate court) had not remanded jurisdiction to the trial court until later. Petitioner was on probation during the appellate process, and he did nothing to violate the probation (if petitioner violated probation that would give the trial court jurisdiction to act – however, that was not the case).

> Trial court was without jurisdiction to order defendant to appear at probation revocation hearing where defendant was not subject to any conditions of release pending appeal . . .

State v. Johnson, 711 P.2d 1017 (1986). See also RCW 9.95.062. There were other concerns about the validity of the warrant relating to: 1)

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[2] Washington has changed this law so that it will not cause an arrest as it did in petitioner's case.

claim that petitioner failed to appear (petitioner appeared by letter); 2) possible improper claims by Prosecutor Scudder to the trial court; 3) due process relating to changes in the court date (from December 7th to December 1st) – December 7th petitioner was available and in the country but was unavailable and out of the country on December 1st - and petitioner was not properly notified of the changes in the dates; and 4) possibly impropriety relating to the change of the judge who was aware of the action to a judge that was unfamiliar with the action. See *Garmon v. Lumpkin County*, 878 F.2d 1406 (11th Cir. 1989) (sheriff liable where facts in support of warrant are patently insufficient to establish probable cause).

Improper Action Taken Subsequent To Issuance of Warrant

Petitioner alleges that the actions the defendants took subsequent to the issuance of a warrant was also an abuse of process. The defendants claim they did nothing more than enter the warrant into the statewide database. If defendants simply entered the warrant into the statewide database, then there would be no basis for a claim of abuse of process. However, that is not what the defendants did.

The defendants – *within a 24 hour period* – : 1) carried the 4 –month old warrant down to the Adams County Sheriff's Department; 2)

contacted the King County Sheriff's Department; 3) confirmed with King County that they would pick petitioner up if the warrant was entered into the statewide database; 4) entered the warrant into the statewide database; 5) again contacted the King County Sheriff's department that the warrant was entered; 6) caused to have three King County Sherriff's department squad cars dispatched to petitioner's personal residence in Auburn, Washington; and 7) arrested petitioner for his failure to appear at a show cause hearing that ***Adams County had no jurisdiction to initiate***. Further, the statewide database showed "East/West" indicating that petitioner was subject to arrest on either side of the state. Yet, because of the minor claim of failure to appear, arrest warrant procedures only call for an entry into the statewide database for "East" only – a further indication of the abuse of process exhibited by the defendants. This was all carried out in a 24-hour period. The arrest process was not designed to specifically single petitioner out for arrest.

This was a complete abuse of process because the arrest process was not designed to specifically target petitioner – however, that is exactly what the defendants did. See *In re Foust*, 310 F.3d 849, 855 (5th Cir. 2002) ("Law enforcement officers have absolute immunity

for enforcing the terms of a court order but only qualified immunity for the manner in which they choose to enforce it.") The manner in which the defend ants chose was an abuse of process.

Judge Pechman showed bias and prejudice by claiming this was a frivolous claim. Judge Pechman abused her discretion.

4. Abuse of Rule 11 Sanctions

Defendants Rule 11 motion did not rise to the level of justifying the motion. It was made for an improper purpose and was not specific enough in analysis of the wrongdoing to put petitioner on notice of what petitioner did wrong.

The Statement of Facts goes on and on. This is just harassment and intimidation. It was not germane to the Rule 11 motion. Finally, defendant Adams County gets to the point with a few lines about entering the warrant into the state database. (App. 50) That is it. Pages of inane ramblings and then a paragraph about the statewide database. Except for that paragraph everything else is fluff. This is supposed to put petitioner on notice that he violated Rule 11. This is a ***violation by defendant*** of Rule 11. See *United States v. City of San Francisco*, 132 F.R.D. 533, 537 (N.D. Cal. 1990) (while Rule 11 is designed to discourage patently frivolous

claims, the proper means of attacking opponent's position is through cogent legal argument in opposition papers, not through Rule 11). Here, petitioner is attacking the abuse of singling out petitioner in the way the arrest was achieved (within 24 hours of putting the warrant into the state database). The defendants claim that they properly utilized the system to arrest petitioner within a 24-hour period. This is not justification for a Rule 11 motion. See FRCP Rule 11 (describe the specific conduct alleged to violate subdivision (b)). Just because defendant disagrees with petitioner is no reason for a Rule 11 motion. It is for the court to determine if the warrant is valid or not, and whether or not defendants abused the process in the way they effected petitioner's arrest. See *Nakash v. United States Department of Justice*, 708 F.Supp. 1354 (S.D.N.Y. 1988) (sanctions are inappropriate where there are differing interpretations of the law and where contrary controlling authority is not obvious).

Judge Pechman abused her discretion by accepting such a poorly presented motion.

5. Other Defendant Abuses

Defendant Adams County also claims in the in its motion: 1) previous Rule 11 motion against petitioner but was overruled on the basis that Adams County did not comply with

the Rule 11 safe harbor provisions (App. 52); and 2) filed this action that is based on the same facts and theories as the previous action. (App. 48) These are significant misrepresentations. The previous Rule 11 *was* overruled for lack of a safe harbor provision. However, the record shows that petitioner would have adjusted his complaint to correct the basis for the motion.[3] As for the claim that this action is based on the same facts and theories as the previous action, this is patently untrue. One action was based on an arrest for refusing to sign an infraction, and the other was based on an arrest for failing to appear – over a year after the first action.

6. Judge Pechman's Justification for Sanctions Was an Abuse of Discretion.

Prevent Future Frivolous Lawsuits (App. 39)

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[3] Petitioner also alleges in a subsequent lawsuit that this Rule 11 motion was a deliberate abuse of process. That is, the defendant deliberately denied the safe harbor because the defendant knew that petitioner would correct the offending portion had the safe harbor been provided – so rather than submitting the Rule 11 as the rule required, defendant deliberately ignored the safe harbor provision.

– Judge Pechman has not established that there are any other frivolous lawsuits. Judge Pechman infers that, but for a 21 day safe harbor rule, petitioner would have been sanctioned. That is not true. This is an abuse of discretion unless Judge Pechman could establish there were other frivolous lawsuits. The fact that the previous Rule 11 claim (App. 38) was overturned by the Ninth Circuit does not count for petitioner as it should – but actually counts against petitioner. This is an abuse of process.

Heels of a similar civil suit (App. 39)
– this is not true. There was nothing similar about the previous lawsuit. There was no showing of *res judicata* or *collateral estoppel.* This is just an unsubstantiated claim, is unworthy of the court, and an abuse of discretion. Also, as pointed out previously, this was a serious misrepresentation by defendants.

Plaintiff is a fairly prolific pro se litigant (App 34, 39)
– there is no basis for this justification – *if* petitioner was a fairly prolific pro se litigant ***and*** made numerous frivolous lawsuits – that would give the court justification for a heavier sanction. However, this unsubstantiated claim shows the bias and prejudice of Judge Pechman. If the court has *specific* concerns

about petitioner's prolification, due process requires that Judge Pechman articulate them and give petitioner an opportunity to address them. Judge Pechman did not do this. See *Vollmer v. Publishers Clearing House*, 248 F.3d 698, 710 (7th Cir. 2001) (entitled to consider past cases when considering sanction to impose but should provide detailed information about the evidence that it wished to consider to the attorneys, and it should have provided them the opportunity to be heard and defend themselves about such matters).

Not limited to the sanctionable conduct (App. 40) – it is firmly established that Rule 11 sanctions be limited to the sanctionable conduct – and the sanctionable portion only. See *Cooter & Gell v. Harmarx Corp.*, 496 U.S. 384, 406-07 (1990) (sanction must be limited to costs and fees incurred because of the sanctionable paper). Judge Pechman based the sanction on the overall costs presented for the entire lawsuit – over $18,000. Then Judge Pechman claims that this is too high but $10,000 would be within the ball park. The Rule 11 motion only complained about putting the warrant into the statewide database as a frivolous claim and it was only made by the one defendant – Adams County. There is no determination as to what this specific sanctionable portion was in defendants

submission to the court. Judge Pechman's $10,000 determination is contrary to Cooter because it is based on the entire lawsuit. *And,* it is based on three defendants – when in fact it was only one defendant that made the motion. Judge Pechman's determination is an egregious abuse of discretion.

Annual Income of $55,000 (App. 55)
Judge Pechman places too much emphasis on ability to pay, claiming that because Corrigan makes $55,000, a significant monetary sanction is necessary. Sanctions are not supposed to work that way. See *Zazu Designs v. L'Oreal, S.A.*, 979 F.2d 499, 508 (7th Cir. 1992) (although ability to pay is a factor, million dollar sanction based on percentage of defendant's net worth was not justified by deterrent purpose of Rule 11). See also *Danvers v. Danvers*, 959 F.2d 601, 605 (6th Cir. 1992) (the most important factor is deterrence followed by compensation for expenses, mitigation of fees and ability to pay).

7. Abuses of Appellate Review of Sanction

Appellate review of Judge Pechman's original action was feeble. In light of all the abuses of discretion outlined in petitioner's appeal brief, the appellate court could only address: (App. 4)

- The district court concluded that his claims were frivolous;
- The court gave petitioner an opportunity to show his one potentially nonfrivolous argument had a factual basis;
- Petitioner had acted similarly in a related case; and
- He had extensive experience as a plaintiff.

First, petitioner's claims were not frivolous as addressed in this writ. Second, the court did not give petitioner an opportunity on his one non-frivolous argument because Judge Pechman erred in claiming that Petitioner needed to show a stay was in place. Third, petitioner was on probation and it was wrong for the court to require that a stay was in place. The court rules do not require a stay.

Fourth, it was not shown that Petitioner had acted similarly in a related case. This is just an unsubstantiated claim and is unworthy of the appellate court.

And fifth, petitioner had extensive experience as a plaintiff. This has no relevance. This claim was a denial of due process and shows bias and prejudice on the part of the appellate court.

The action by the appellate court was little more than a rubber stamp.

> The abuse of discretion standard does not immunize a district court's opinion from a careful review by the court of appeals. In many cases, a careful review will result in a reversal of the imposition of sanctions. For example, in Media Duplication Services, Ltd. v. HDG Software, Inc., the First Circuit stated that the court of appeals was not to act as a "rubber stamp," even though an across-the-board abuse of discretion standard was to be applied. The court then pointed out that the district court had failed to provide adequate due process to the target of the sanctions, and it held that the district court had been wrong on the merits of the Rule 11 issue as well. Accordingly, it reversed the imposition of sanctions. [Citations omitted]

Rule 11 Sanctions, p. 496.

Again, this action would never have risen to the level it has in any other circuit. The well settled rules of law would have applied in any other circuit and petitioner would have had a fair and impartial trial.

III. RECUSAL

1. Judge Pechman's Failure to Recuse

Judge Pechman should have recused herself. Her actions outlined in this writ show an egregious bias and prejudice. Even Judge Pechman's requirement to pay the $10,000 sanction prior to issuance of the summons shows bias and prejudice. (App. 5) Under Hymes the court is talking about the failure of paying sanctions prior to initiating another – similar lawsuit. However, Judge Pechman knows that this situation is completely different. Judge Pechman knows that unlike Hymes petitioner is appealing the original lawsuit, and petitioner is not making a ***new*** lawsuit, but is only pursuing those defendants that Judge Pechman improperly (motivated by bias and prejudice) dismissed without prejudice in the original complaint. Judge Pechman shows bias and prejudice by requiring petitioner to pay the $10,000 under those circumstances.

Further, a reasonable man knowing all the circumstances of Judge Pechman's determinations (as outlined in this writ), would certainly find that there is the "appearance of bias."

> . . . but requiring them all to be evaluated on an *objective* basis, so that what matters is not the reality of bias or

> prejudice but its appearance. Quite simply and quite universally, recusal was required whenever "impartiality might reasonably be questioned." . . .
>
> . . . opinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion ***unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible.*** [Emphasis added]

Liteky v. U.S., 114 S.Ct. 1147, 1154-1157 (1994). Petitioner submits that the actions identified throughout this writ of Judge Pechman's numerous abuses of discretion relating to the summary judgment and the Rule 11 sanctions qualifies Judge Pechman for a claim that she displays "a deep-seated favoritism or antagonism that would make fair judgment impossible." Judge Pechman's determinations in this action are contrary to established law. Judge Pechman could not make fair judgment – therefore, Judge Pechman should have recused herself. See *Switzer v. Berry*, 198 F.3d 1255 (10th Cir. 2000) (The test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality).

2. Appellate Recusal Review (App. 1)

The appellate review of the recusal is just a rubber stamp claiming that Hymes allows Judge Pechman to require payment without an analysis of the differences between petitioner and Hymes.

Also, the appellate court claimed that judicial rulings alone almost never constitute a valid basis for a bias or bias motion – (Pesnell) without any reference to Liteky or any analysis of the abuses of discretion that Judge Pechman displayed in the original proceedings of summary judgment and the Rule 11 sanctions. Petitioner was denied a fair and impartial trial because of the established bias and prejudice exhibited by Judge Pechman and denied petitioner a fair and impartial tribunal.

CONCLUSION

For the foregoing reasons, petitioner prays:

1. That a writ of mandamus issue from this Court directed to the Honorable United States District Court for the Western District of Washington, Seattle Division, and to the Honorable Marsha Pechman, Judge of said Court, requiring said Honorable Marsha

Pechman, to show cause on a day to be fixed by this Court why mandamus should not issue from this Court directing said Honorable Marsha Pechman, to relieve petitioner of the order of August 2, 2006, granting summary judgment, dismissal of certain "unknown" defendants, and Rule 11 sanctions in the amount of $10,000 in *Corrigan v. Unknown King County Deputy*, et. al., No. 05-1727P Civil, determined in the Western District of Washington, Seattle Division;

2. That the relieved order of *Corrigan v. Unknown King County Deputy*, et. al. be transferred to a district court in another circuit for consideration by that district court; and

3. That petitioner have such additional relief and process as may be necessary and appropriate in the premises.

Respectfully submitted,

John L. Corrigan
31912 – 53rd Place South
Auburn, WA 98001-3877
253.735.5025
Petitioner, Pro Se

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

John L. Corrigan, Plaintiff - Appellant, v. Darrin Jenks, et. al. Defendants.	No. 07-35584 D.C. No. CV-06-01710 MEMORANDUM

Appeal from the United States District Court for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding
Submitted December 17, 2008**
Before: WALLACE, TROTT, and RYMER, Circuit Judges.

John Louis Corrigan appeals pro se from the district court's judgment dismissing his 42 U.S.C. § 1983 action, without prejudice, for failure to pay the sanctions imposed in a prior case on the same matter. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's exercise of the power to dismiss. *See Hacopian v. U.S. Dep't of Labor*, 709 F.2d 1295, 1297 (9th Cir. 1983), and we affirm.

The district court properly dismissed the action because Corrigan failed to prove that he paid the sanctions that were imposed in the prior action or show cause why his complaint should not be dismissed for failure to pay the sanctions. *See Hymes v. United States*, 993

F.2d 701, 702 (9th Cir. 1993) (dismissing appellant's appeal for failure to pay sanctions previously imposed in a prior action involving the same parties and claims). The district court did not abuse its discretion when it dismissed Corrigan's motions for recusal because "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Pesnell v. Arsenault*, 543 F.3d 1038, 1044 (9th Cir. 2008) (internal citation omitted).

AFFIRMED.

[Filed 01/14/2009]

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

John L. Corrigan, Plaintiff- Appellant, v. King County Deputy, Unknown #1; et al., Defendants.	)))))))	No. 06-35998 D.C. No. CV-05-01727 MEMORANDUM

Appeal from the United States District Court for the Western District of Washington Marsha J. Pechman, District Judge, Presiding

Submitted July 9, 2007**

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: LEAVY, THOMAS, and BERZON, Circuit Judges.

John L. Corrigan appeals the district court's imposition of sanctions under Federal Rule of Civil Procedure 11. We review the imposition of Rule 11 sanctions for abuse of discretion, which may be found if the district

court based its decision on an erroneous view of the law or on a clearly erroneous factual finding. See Retail Flooring Dealers ofAm., Inc. v. Beaulieu of Am., LLC, 339 F.3d 1146, 1150 (9th Cir. 2003). We affirm.

Litigants are subject to Rule 11 sanctions for, among other reasons, presenting to the court "claims, defenses, and other legal contentions . . . [not] warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." FED. R. Civ. P. 11(b)(2).

After carefully examining Corrigan's arguments, the district court concluded that his claims were frivolous. See Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1984) (noting that a litigant's pro se status must be considered when assessing claims for frivolousness). The court gave Corrigan an opportunity to produce evidence showing that his one potentially nonfrivolous argument had a factual basis. Corrigan failed to do so. The court also noted that Corrigan had acted similarly in a related case and that he had extensive experience as a plaintiff.

After considering those factors, the court imposed sanctions of $ 10,000. The sanction was substantial, but the court did not abuse its discretion. AFFIRMED. [Filed 07/23/2007]

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

John L. Corrigan, Plaintiff - Appellant, v. Darrin Jenks, et. al. Defendants.	D.C. No. CV-06-01710 ORDER OF DISMISSAL

By prior order, the Court directed Plaintiff to either: (1) file proof that he has paid the sanctions imposed against him in Corrigan v. Unknown King County Deputy #1, C05-1727P ("Corrigan I"); or (2) show cause why his complaint in this action should not be dismissed without prejudice for failure to pay the sanctions imposed in Corrigan I. (Dkt. No. 8.) In response to the Court's order, Plaintiff indicates that he has not paid the sanctions imposed in Corrigan I, but argues that this case should not be dismissed due to his failure to pay those sanctions. (Dkt. No. 10.) Plaintiff also filed a separate motion to have the undersigned judge recused from this case (Dkt. No.9), which has been denied by Chief Judge Lasnik (Dkt. No. 12).

Having reviewed Plaintiff's response and the balance of the record in this case and in Corrigan I, the Court finds and ORDERS as follows:

(1) Plaintiff has failed to show cause why this action should not be dismissed without prejudice due to his failure to pay the sanctions imposed against him in Corrigan I. As the Court previously noted, the Ninth Circuit has held that "[c]ourts have inherent power to dismiss actions for nonpayment of costs in prior actions." Hymes v. United States, 993 F.2d 701, 702 (9th Cir. 1993). "This power also extends to a litigant's failure to pay previously imposed sanctions." Id. Here, the Court invokes its inherent authority to dismiss this action due to Plaintiff's failure to pay the sanctions previously imposed in Corrigan I, particularly in light of the similarities between Plaintiff's complaint in this matter and the complaint filed in Corrigan I.

(2) The Clerk is directed to send a copy of this order to Plaintiff.

Dated: July 17, 2007.

s/Marsha J. Pechman
Marsha J. Pechman
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

John L. Corrigan Plaintiff, Vs. Unknown King County Deputy #1, et. al.	NO. CV 05-1727-P Order on Adams County Defendants' Motions for Summary Judgment and for Rule 11 Sanctions

This matter comes before the Court on two motions by Defendant Adams County and its employees Sheriff D. Barger and "Unknown County of Adams Official." For ease of reference, these three defendants will be referred to collectively as the "Adams County Defendants." First, the Adams County Defendants have moved for summary judgment. (Dkt. No. 14). Second, the Adams County Defendants have moved for Rule 11 sanctions against Plaintiff. (Dkt. No. 15). The Court, having considered the materials submitted in support of and in opposition to these motions, hereby ORDERS as follows:

(1) The Court GRANTS the Adams County Defendants' motion for summary judgment. (Dkt. No. 14). All claims against Adams County, Sheriff D. Barger, and

"Unknown County of Adams Official" are DISMISSED.

(2) The Court GRANTS IN PART the Adams County Defendants' motion for Rule 11 sanctions. (Dkt. No. 15). The Court finds that Plaintiff violated Federal Rule of Civil Procedure 11 by filing frivolous claims against the Adams County Defendants without reasonable inquiry. However, the Court reserves ruling on the type or amount of sanctions to be imposed because the Court requires additional evidence in order to made such a determination.

(3) Within thirty days of the date of this Order, the Adams County Defendants are directed to file a motion documenting the reasonable attorneys' fees that they incurred as a direct result of the Rule 11 violations. In responding to the forthcoming motion, Plaintiff may offer evidence relevant to determining an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof.

Background

Plaintiff John Corrigan, proceeding pro se, has brought claims under 42 U.S.C. § 1983 and Washington state law against Defendants Adams County, Adams County Sheriff D. Barger, and an "unknown County of Adams official." His complaint also raises claims

against King County and various named and unnamed King County officials.

The events leading to this dispute began in February 2003, when Plaintiff was stopped for speeding in Adams County. He refused to sign his notice of infraction, as required by Washington law, and was charged with Failure to Sign Notice of Infraction. In May 2003, Plaintiff was convicted

of this offense following a trial in Adams County District Court. He was sentenced to 90 days in jail, with 85 days suspended. Plaintiff was given 90 days from the imposition of the sentence to serve his five days in jail. In a civil proceeding, Plaintiff was also fined for speeding. Plaintiff unsuccessfully appealed both his criminal and civil cases.

In July 2003, Plaintiff filed a civil action in the U.S. District Court for the Eastern District of Washington, bringing Section 1983 and state-law claims against the Washington State Patrol troopers who arrested him, the Adams County District Court judge who presided over his criminal trial, the Adams County deputy prosecuting attorney who litigated his criminal case, the Adams County Sheriff, and Adams County. This civil action was dismissed on summary judgment in August 2004, with Rule 11 sanctions imposed on Plaintiff for bringing claims against an

Adams County District Judge. See Corrigan v. Dale, No. CS-03-247-FVS, slip op. (E.D. Wash. Aug. 23, 2004). The Ninth Circuit affirmed the summary judgment ruling, but reversed the imposition of Rule 11 sanctions for failure to comply with the "safe harbor" requirements of Rule I I (c)(1)(A). Corrigan v. Dale, 2006 WL 83342 (9th Cir. Jan. 9, 2006).

Plaintiff did not serve his five-day jail sentence in 2003 or 2004. On November 9, 2004, Adams County deputy prosecuting attorney Barrett Scudder filed a motion in Adams County District Court seeking an order to require Plaintiff to appear and show cause why he should not be required to serve his sentence. Plaintiff does not dispute that he received notice of this hearing. Nonetheless, Plaintiff failed to appear at the show cause hearing. On December 1, 2004, Judge Joshua Grant issued a warrant for Plaintiffs arrest.

Plaintiff maintains and the Adams County Defendants do not dispute that the Adams County Sheriff's Office entered the warrant into a statewide database. Based on this warrant, Plaintiff was arrested in April 2005 in King County. Following his arrest, Plaintiff served two days in King County Jail, and then completed the remaining three days of his sentence in Adams County.

Plaintiff filed this lawsuit in October

2005. Plaintiff appears to allege that the Adams County Defendants unlawfully issued the arrest warrant and improperly entered the warrant into a statewide database. Plaintiff asserts that at the time the warrant was sought and issued, his criminal conviction and sentence were stayed pending appeal. Defendants deny that any stay was in place.

Adams County and its employees (Sheriff Barger and "Unknown County of Adams Official"), have now moved for summary judgment. They have also moved for sanctions against Plaintiff under Rule 11.

Analysis

Summary judgment is appropriate if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Fed. R. Civ. P. 56(c). While "some alleged factual dispute between the parties will not defeat" a motion for summary judgment, "disputes over facts that might affect the outcome of the suit ... will properly preclude the entry of summary judgment." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48 (1986). Once a party has moved for summary judgment, it is the non-moving party's burden to provide sufficient

evidence such that a reasonable jury could decide in their favor. Id. at 248. Because Plaintiff is proceeding pro se, the Court construes his pleadings liberally. Eldridge v. Block, 832 F.2d

1132, 1137 (9th Cir. 1987).

1. Claims Against "Unknown Adams County Official"

In his complaint, Plaintiff has identified two defendants from Adams County by their actual names: (1) the County itself-, and (2) Sheriff D. Barger. Although Plaintiff also named an "Unknown Adams County Official" as a defendant in his complaint, Plaintiff has not moved to substitute a named defendant for this "unknown" official.

Plaintiff's complaint provides virtually no information about the "Unknown Adams County Official." The complaint only includes the two following paragraphs in which this "unknown" official is specifically mentioned:

> During all times mentioned in this Complaint, the defendant Unknown Adams County Official (UACO), was a duly appointed official in the County of Adams ... acting in their official capacity. UACO is sued, however, only in his/her individual capacity.
>
> * * *

> Defendants UACO, Barger, and Adams County caused a state-wide warrant be instigated against plaintiff. Warrant was: (a) without probable cause; (b) malicious prosecution; (c) retaliatory prosecution; (d) abuse of process; and (e) based on an unconstitutional statute. Further, there is every indication that this was a conspiracy between Defendants Adams County, Sheriff Barger, UACO and possibly others in Adams County.

Complaint pp 7 and 22.

The Ninth Circuit disfavors the practice of filing a complaint against an "unknown" or "John Doe" defendant. Gillespie v. Civiletti, 629 F.2d 637, 642 (9th Cir. 1980). However, a plaintiff may name such unknown defendants "where the identity of alleged defendants will not be known prior to the filing of a complaint." Id. In such cases, "the plaintiff should be given an opportunity through discovery to identify the unknown defendants, unless it is clear that discovery would not uncover the identities, or that the complaint would be dismissed on other grounds." Id.

However, a plaintiff who seeks to file suit against "unknown" defendants "must not only allege that the defendant is unknown, but also provide, or attempt to provide, an adequate description or other known information so that

service of process can at least be attempted." 2 James Wm. Moore, Moore's Federal Practice § 10.02[2][d][i] (3d ed. 2006). In addition, it is not permissible for a plaintiff to name an "unknown" defendant in a complaint "if the plaintiffs ignorance of the defendant's true identity is the result of willful neglect or lack of reasonable inquiry." Id. "If reasonable inquiry would have revealed the true identity, a pleading naming John Doe defendants will be dismissed." Id.

Applying these principles, Plaintiffs claims against "Unknown Adams County Official" must be dismissed for several reasons. First, Plaintiff's complaint provides no clue regarding the identity of the "unknown" official. In cases where the plaintiff's description of an "unknown" defendant is inadequate, dismissal is appropriate because it is impossible to serve process on such a defendant. See, e.g., Roper v. Grayson, 81 F.3d 124, 126 (10th Cir. 1996) (use of unnamed defendants permitted "so long as the plaintiff provides an adequate description of some kind which is sufficient to identify the person involved so process eventually can be served"); Keno v. Doe, 74 F.R.D. 587, 588 n.2 (D.N.J. 1978) (same).

Plaintiff has also had ample opportunity to seek discovery to determine the identity of the "unknown" Adams County official. Plaintiff

filed this complaint in October 2005 and has had many months to seek discovery to ascertain the identity of this official. When a plaintiff fails to use the discovery process to identify an "unknown" defendant, dismissal of claims against the unknown defendant is appropriate. See Strauss v. City of Chicago, 760 F.2d 765, 770 n.6 (7th Cir. 1985). As one court has observed, "a district court otherwise prepared to act on dispositive motions is not obligated to 'wait indefinitely for [the plaintiff] to take steps to identify and serve ... unknown defendants.'" Figueroa v. Rivera, 147 F.3d 77, 82 (1st Cir. 1998).

Construing Plaintiffs pleadings liberally, it is possible that Plaintiff intends the Court to regard either the Adams County deputy prosecuting attorney or judge who were involved in issuing his arrest warrant as the "unknown Adams County official." Indeed, Plaintiff devotes much of his opposition brief to complaining about the actions of these individuals, despite the fact that neither person is named as a defendant in Plaintiff's complaint. However, the Court cannot presume that either of these officials is the "unknown" official named in Plaintiff's complaint because their identities are readily determinable: The deputy prosecuting attorney who sought Plaintiff's warrant was Barrett Scudder and the warrant was signed by Judge Joshua F.

Grant. As noted earlier, a plaintiff will not be permitted to name an "unknown" defendant in a complaint where the identity of the "unknown" individual could be ascertained prior to filing the complaint through reasonable inquiry. See Moore, supra, § 10.02[2][d][i]. Therefore, Plaintiff's claims against "Unknown Adams County Official" are dismissed.

2. Section 1983 Claims

A. Claims Against Sheriff Barger

Construing Plaintiffs pleadings liberally, it appears that his claims under 42 U.S.C. § 1983 against Adams County Sheriff D. Barger are based on a theory that the Sheriff and/or his office violated Plaintiff's constitutional rights by: (1) causing an arrest warrant signed by Judge Joshua Grant to be entered into a statewide database; and (2) allegedly contacting the King County Sheriffs Office to seek Plaintiff's arrest pursuant to the warrant. The Adams County Defendants argue that Sheriff Barger is immune from these claims, either on the grounds of quasi-judicial immunity or qualified immunity.

To support their argument for quasi-judicial immunity, the Adams County Defendants note that courts have held that "police officers, sheriffs, and other court officers who act in reliance on a facially valid court

order are entitled to quasi-judicial immunity from suit under § 1983 for damages." Henry v. Farmer City State Bank, 808 F.2d 1228, 1239 (7th Cir. 1986); see also Coverdell v. Dep't of Social & Health Servs., 834 F.2d 758, 764-65 (9th Cir. 1987) (similar). Although Plaintiff asserts in his complaint that the warrant was "defective on its face" (Complaint 1 13), Plaintiff has not offered any evidence suggesting that the warrant issued by Judge Grant on December 1, 2004 was not facially valid. Among other things, the warrant was signed by the judge of the charging jurisdiction, specified Plaintiffs name and physical description, specified the offense charged, and was issued to all peace officers of the state. See Wash. Crim. Rule for Courts of Limited Juris. 2.2. Although Plaintiff suggests that the warrant was invalid because it was supposedly issued in violation of a stay of his conviction and sentence pending appeal,[1] Plaintiff offers

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[1] Aside from Plaintiff s conclusory assertion, Plaintiff offers no evidence (such as a court order) indicating that criminal conviction and sentence had been stayed pending appeal. In any case, it appears from the record that the Washington Supreme Court issued a final order regarding Plaintiff s appeal of his criminal case on November 3, 2004. On November 9, 2004, Adams County deputy prosecuting attorney Barrett Scudder filed a motion for an order to

no reason why the Sheriff or his office would have reason to question the facial validity of the warrant. As such, Sheriff Barger is entitled to quasi-judicial immunity for acting in reliance on the warrant.

In addition, Sheriff Barger would also be entitled to qualified immunity from civil damages under Section 1983 for taking the actions alleged by Plaintiff. Determining whether a government official is entitled to qualified immunity "requires a two-part inquiry: (1) Was the law governing the state official's conduct clearly established? (2) Under that law could a reasonable state official have believed his conduct was lawful?" Browning v. Vernon, 44 F.3d 818, 822 (9th Cir. 1995). Here, Plaintiff points to no clearly established constitutional violation committed by Sheriff Barger. At most, the evidence indicates that

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show cause why Plaintiff should not be required to serve his sentence. Despite the ruling from the state Supreme Court on his appeal, Plaintiff appears to believe that the Adams County District Court could not issue a warrant for his arrest until Plaintiff received rulings on: (1) a petition fora writ of certiorari submitted to the United States Supreme Court; and/or (2) a habeas corpus petition. Plaintiff offers no evidence or legal authority to support this contention.

Sheriff Barger acted on a facially valid warrant.

Therefore, Plaintiff's Section 1983 claims against Sheriff Barger are dismissed.

B. Claims Against Adams County

Section 1983 claims maybe brought against local government units such as a county.

However, the Supreme Court has held:

> [A] local government may not be sued under Section 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under Section 1983.

Monell v. Dep't of Social Servs. of City of New York, 436 U.S. 658, 694 (1978).

Here, Plaintiff has not offered evidence to raise a genuine issue of material fact on whether his alleged injuries were inflicted as a result of any policy or custom of Adams County. For the most part, Plaintiff appears to argue in his opposition brief that he was injured by an "out of control" prosecutor, presumably deputy prosecuting attorney

Barrett Scudder. However, Plaintiff offers no evidence that Mr. Scudder had policy-making authority for Adams County. An official policy "must result from a deliberate choice made by a policy-making official," which "may be inferred from widespread practices or 'evidence of repeated constitutional violates for which the errant municipal officers were not discharged or reprimanded.'" Naell v. Las Vegas Metro. Police Dep't, 268 F.3d 924, 929 (9th Cir. 2001). "A plaintiff cannot prove the existence of a [local government] policy based solely on the occurrence of a single incident or unconstitutional action by a non-policymaking employee." Davis v. City of Ellensburg, 869 F.2d 1230, 1233 (9th Cir. 1989).

For similar reasons, Plaintiff has not offered evidence to raise a genuine issue of material fact on whether any alleged deprivations of his constitutional rights resulted from a custom of Adams County. "Liability for improper custom may not be predicated on isolated or sporadic incidents; it must be founded upon practices of sufficient duration, frequency, and consistency that the conduct has become a traditional method of carrying out policy." Trevino v. Gates, 99 F.3d 911, 918 (9th Cir. 1996); see also Thompson v. City of Los Angeles, 885 F.2d 1439, 1443-44 (9th Cir. 1989)

("Consistent with the commonly understood

meaning of custom, proof of random acts or isolated events [is] insufficient to establish custom."). Plaintiff offers no evidence of such a custom here.

Finally, Plaintiff appears to suggest that Adams County and/or Sheriff Barger maybe held liable under Section 1983 for failure to train or supervise employees. A local government or official may only be held liable under Section 1983 for failure to train or supervise employees when such a failure reflects a conscious choice by a municipality and amounts to deliberate indifference to the rights of citizens. City of Canton v. Harris, 489 U.S. 378, 388 (1989). Plaintiff has offered no evidence suggesting such deliberate indifference here on the part of either Adams County or Sheriff Barger.

Therefore, Plaintiff's Section 1983 claims against Adams County are dismissed.

3. Remaining Claims

In addition to federal claims under Section 1983, Plaintiffs complaint also raises various claims under state law. His complaint alleges:

> [T]he defendants deprived the plaintiff of his rights to be free from false imprisonment, search and seizure of his person, unreasonable force, cruel and unusual punishment, unreasonable bail,

> abuse of process, malicious prosecution, and intentional infliction of emotional distress. All of these rights are secured to the plaintiff by the provisions of Washington law which are invoked under the supplementary jurisdiction of this court.

(Complaint p. 28). Although it is not clear that Plaintiff intends to maintain all of these state-law claims against each of the eight defendants named in his complaint, the Court considers each potential claim as it relates to the Adams County Defendants.

False Arrest/False Imprisonment: Under Washington law, the existence of probable cause is a complete defense to an action for false arrest or false imprisonment. See McBride v. Walla Walla County, 95 Wash. App. 33, 38 (1999). Here, the Adams County Defendants plainly had probable cause to seek Plaintiff's arrest and to imprison him, given his 2003 conviction and the issuance of a facially valid arrest warrant by Judge Grant.

Search & Seizure and "Unreasonable Force" Claims: Plaintiff has alleged no facts to support an unlawful search and seizure or "unreasonable force" against any of the Adams County defendants. Plaintiff was arrested by officials from King County, not Adams County.

Excessive Bail: Plaintiff has no claim for

excessive bail against any named defendants, given that neither Adams County nor Sheriff Barger set Plaintiff's bail. See, e.g. Kohl v. Casson, 5 F.3d 1141, 1149 (8th Cir. 1993).

Cruel and Unusual Punishment: Plaintiff provides no allegations or evidence to support a claim for cruel or unusual punishment with respect to jail conditions in Adams County. Plaintiff may believe that the length of his sentence (5 days) constituted cruel and unusual punishment. However, a challenge to the duration of a state prison sentence may be attacked in federal court solely through a writ of habeas corpus. See Young v. Kenny, 907 F.2d 874, 875 (9th Cir. 1990) ("Where a state prisoner challenges the fact or duration of his confinement, his sole federal remedy is a writ of habeas corpus").

Malicious Prosecution: Plaintiff has no basis to maintain a claim for malicious prosecution against any Adams County Defendants. Under Washington law, it is well-settled that a malicious prosecution action may be maintained only if the prosecution terminated in favor of the person asserting the claim. Clark v. Baines, 150 Wn.2d 905, 911 (2004). Here, the prosecution in Adams County did not terminate in Plaintiff's favor.

Abuse of Process: Plaintiff contends that numerous actions taken constitute abuse

of process. However, Plaintiff does not present sufficient evidence to support an abuse of process claim. A claim for abuse of process has two essential elements: (1) the existence of an ulterior purpose – to accomplish an object not within the proper scope of the process; and (2) an act in the use of legal process not proper in the regular prosecution of the proceedings. Fite v. Lee, 11 Wn. App. 21, 27 (1974). "[T]he test as to whether there is an abuse of process is whether the process has been used to accomplish some end which is without the regular purview of the process, or which compels the party against whom it is used to do some collateral thing which he could not legally and regularly be compelled to do." Batten v. Abrams, 28 Wn. App. 737, 747-48 (1981). Here, the actions taken by the Adams County Defendants compelled Plaintiff to serve his five days in jail, as required by his conviction and sentence in Adams County District Court. Although Plaintiff makes a number of conclusory allegations regarding the motives of the deputy prosecuting attorney in Adams County (an individual who is not named as a defendant in this action), Plaintiff has not offered any evidence suggesting that the Adams County Defendants used the judicial process to compel Plaintiff to do some collateral thing that he could not legally be compelled to do.

Intentional Infliction of Emotional Distress: Under Washington law, a claim for intentional infliction of emotional distress (more commonly known as the tort of "outrage") has three elements: (1) extreme and outrageous conduct; (2) intentional or reckless infliction of emotional distress; and (3) actual result to the plaintiff of severe emotional distress. Brower v. Ackerley, 88 Wn. App. 87, 98 (1997). Only conduct that is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community" supports an outrage claim. Reid v. Pierce County, 136 Wn.2d 195, 202 (1998). "[T]he trial court must make an initial determination as to whether the conduct may reasonably be regarded as so 'extreme and 'outrageous' as to warrant a factual determination by the jury." Jackson v. Peoples Fed. Credit Union, 25 Wn. App. 81, 84 (1979). Here, the Court finds that the conduct of the Adams County Defendants cannot reasonably be regarded as being so extreme and outrageous to support a claim of outrage.

Failure to Transport Plainti ff to Adams County: In his opposition brief, Plaintiff asserts that Adams County failed to transport Plaintiff from King County to Adams County to serve his sentence. Putting aside the fact that this allegation was not raised in

Plaintiff's complaint, Plaintiff offers no evidence to support his assertion that Adams County was obliged to transport him from King County, nor does he offer any legal authority or argument to support a claim based on this contention.

Summary

For the reasons discussed above, Plaintiffs state-law claims against the Adams County Defendants must be dismissed.

4. Request for Rule 11 Sanctions

By separate motion, the Adams County Defendants have moved for sanctions against Plaintiff under Federal Rule of Civil Procedure 11. [2]

The Adams County Defendants complied with the "safe harbor" requirements of Rule I I (c)(1)(A) by serving a copy of their motion for sanctions on Plaintiff at least 21 days before filing the motion with the Court, along with a letter to Plaintiff explaining that the motion would be filed if Plaintiff did not dismiss his complaint against Adams County, Sheriff Barger, and "Unknown Adams County

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[2] Plaintiff responded to both the summary judgment motion and the Rule 11 motion in a single brief. Defendants also filed a single reply brief for both motions.

Official."

> Rule 11 (b) provides, in relevant part:
>
> By presenting the court, whether by signing, filing, submitting, or later advocating a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, --
>
> (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;
>
> (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery ....

In turn, Rule I I (c) provides that if the court determines that Rule 11(b) has been violated,

the Court may impose an appropriate sanction on the parties that have violated the rule.

Rule 11 applies to unrepresented ("pro se") parties. However, a court "must take into account a plaintiff's pro se status when it determines whether the filing was reasonable." Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994). Here, even taking into account Plaintiff's pro se status, the Court

finds that Plaintiff failed to conduct an objectively reasonable inquiry before signing and filing a complaint that included frivolous legal claims against the Adams County Defendants.

First, the Court finds that Plaintiffs claims against Sheriff Barger are frivolous and that it was objectively unreasonable for Plaintiff to bring such claims against the Sheriff. Plaintiffs complaint alleges that the Sheriff (along with Adams County and an unknown Adams County official) improperly "instigated" a statewide arrest warrant against him. Plaintiff appears to base his claims against the Sheriff on a theory that: (1) the Sheriff or his office entered a warrant signed by an Adams County District Judge into a statewide database; and (2) the Sheriff or his office "personally" contacted the King County Sheriffs Office to request that Plaintiff be immediately arrested pursuant to the warrant.

However, Plaintiff offers no legal authority that supports his contention that type of this conduct by the Sheriff or his office violated any of his rights under the United States Constitution or under Washington law, nor does he offer any nonfrivolous arguments for the extension, modification, or reversal of existing law or the establishment of new law regarding the Sheriffs liability for such conduct under federal or state law.

Plaintiff suggests (without providing evidentiary or legal support) that the arrest warrant was improperly issued because his conviction and sentence had supposedly been stayed in order to permit him to pursue a petition for a writ of certiorari with the United States Supreme Court and/or a habeas corpus action. However, Plaintiff provides no evidence that the warrant on its face was not valid, despite his allegation in his complaint that the warrant was "defective on its face." In short, Plaintiff provides no legal authority or nonfrivolous argument suggesting that a law enforcement official are subject to suit under federal or state law for entering a facially valid warrant issued by a court into a state database or by contacting other law enforcement officials to request action on a facially valid warrant.[3]

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[3] To the extent that Plaintiff believes that his arrest warrant was improperly issued, his

In addition, Plaintiff's claims for malicious prosecution against the Adams County Defendant are plainly not warranted by existing law or by any nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law. It is black-letter law in Washington that a malicious prosecution action may only be maintained if the proceedings terminated favor of the party bringing the claim. See, e.g., Clark v. Baines, 150 Wn.2d 905, 911 (2004) (noting that a malicious prosecution claim arising from a criminal action requires the plaintiff to prove several elements, including proof "that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned"). Even as a pro se litigant, it was objectively unreasonable for Plaintiff to raise malicious prosecution claims in this action because he was explicitly informed of this rule in the order granting

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complaint would be with the deputy prosecuting attorney who sought the warrant and/or the judge who issued the warrant, not with law enforcement officials who simply acted on a facially valid Court order. Neither the deputy prosecuting attorney nor the judge are named in the complaint — perhaps in recognition of the doctrines of prosecutorial and judicial immunity.

summary judgment in his prior civil rights case in the Eastern District of Washington. See Corrigan v. Dale, No. CO3-247, slip op. at 9 (E.D. Wash. Aug. 23, 2004) (noting that "[i]n order to prevail on his malicious-prosecution claim, Mr. Corrigan must prove the underlying criminal case was terminated on the merits in his favor" and dismissing claim for failure to satisfy that requirement).

On the record before it, the Court also finds that Plaintiff's claims against Adams County are frivolous and that it was objectively unreasonable for Plaintiff to such claims. To the extent that Plaintiff's claims against the County are based on the actions of Sheriff Barger or his office, Plaintiff" claims would be frivolous because there is no legal basis to find that the Sheriff or his office violated Plaintiff's rights under federal or state law by entering a facially valid arrest warrant into a state database. To the extent that Plaintiff is seeking to hold the County liable for the actions of the deputy prosecuting attorney who sought Plaintiff's arrest warrant and/or the actions of the judge that issued the arrest warrant, Plaintiff's claims are frivolous because Plaintiff has provided no competent evidence or legal authority to suggest that the warrant was improperly sought or issued. Moreover, even if the warrant was improperly sought by the deputy prosecuting attorney or

issued by the Adams County District Court judge, Plaintiff has offered no evidence suggesting that such actions were taken in accordance with a County policy or custom, as required to impose liability on the County under Section 1983.

Plaintiffs position appears to be that the arrest warrant was improperly issued because his conviction and sentence were supposedly stayed when the warrant issued. However, Plaintiff has not produced a copy of any court order indicating that such a stay was in place. The existence of such a stay would not alter the Court holding that Plaintiff has no valid claims against the Adams County Defendants named in the complaint, since there is no evidence that issuing a arrest warrant while a stay was in place could be attributable to the County, Sheriff Barger, or "Unknown County of Adams Official." However, if a stay was in place, there may at least be a basis to find that Plaintiff had a reasonable belief that the arrest warrant was improperly issued.

In short, absent any competent evidence that a stay of Plaintiff's conviction and sentence was in place when his arrest warrant issued, the Court finds that Plaintiff had no objectively reasonable basis to bring claims against the County based on the "instigation" of this warrant. However, if Plaintiff can produce competent evidence (such as a court

order) demonstrating that his conviction and sentence were in fact stayed when the arrest warrant was issued, the Court will revisit its determination regarding the frivolousness of Plaintiff's claims against the County.

Although the Court finds that Plaintiff has violated Rule 11, the Court does not have sufficient evidence before it to make a reasoned determination regarding the type or amount of sanctions. While Defendants argue that they should be awarded their attorney fees as a sanction, such an award it not automatic upon the finding of a Rule 11 violation. As the Ninth Circuit has observed, "Rule 11 `provides for sanctions, *not* fee shifting. It is aimed at deterring, and, if necessary punishing improper conduct rather than merely compensating the prevailing party.'" United States ex rel. Leno v. Summit Constr. Co., 892 F.2d 788, 7901 n.4 (9th Cir. 1989).

It should also be noted that the Advisory Committee notes to the 1993 amendments to Rule 11 indicate that a variety of factors may be proper considerations in determining what sanctions, if any, should be imposed for a Rule 11 violation. This considerations include:

> Whether the improper conduct was willful, or negligent; whether it was part of a pattern of activity, or an isolated event; whether it infected the entire

> pleading, or only one particular count or defense; whether the person has engaged in similar conduct in other litigation; whether it was intended to injure; what effect it had on the litigation process in time or expense; whether the responsible person is trained in the law; what amount, given the financial resources of the responsible person, is needed to deter that person from repetition in the same case; what amount is needed to deter similar activity by other litigants.

See also Warren v. Guelker, 29 F.3d 1386, 1390 (9th Cir. 1994) ("a court can properly consider plaintiff's ability to pay monetary sanctions as one factor in assessing sanctions"). Here, the Court lacks information regarding several of these considerations. For example, the Court does not have information regarding Plaintiff's financial resources or his legal training.[4]

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[4] However, it appears that Plaintiff is not an inexperienced pro se litigant. Putting aside Plaintiffs prior civil case in the Eastern District of Washington and his pro se appeals of his criminal and civil cases from Adams County, Plaintiff filed two other lawsuits in this Court in the fall of 2005: (1) Corrigan v. Kline, CO5-1728RSM; and (2) Corrigan v. VISA, U.S.A., CO5-1622RSM. A person named John L. Corrigan also previously filed five other civil

Therefore, the Court directs the Adams County Defendants to file a motion seeking a specific amount of sanctions and documenting the reasonable attorneys' fees that they incurred as a direct result of Plaintiffs Rule 11 violations within 30 days of the date of this order. Such a motion must be noted for the Court's

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suits in this Court between 1988 and 1996: (1) Corrigan v. USA, C88-523JCC; (2) Corrigan v. Steere, C92-1511CRD; (3) Corrigan v. Baker, 94-162OBJR; (4) Corrigan v. Andersen, C94-5373FDB; and (5) Corrigan v. Bargala, C95-570JCC. In addition, a John L. Corrigan is named as a plaintiff in a number of other Washington state and federal cases in recent years, including: (1) Corrigan v. United States, 70 Fed. Cl. 665 (2006); (2) Corrigan v. Dollar, 89 Fed. Appx. 238 (Fed. Cir. Feb. 2, 2004), cert. denied, 543 U.S. 959 (2004); (3) Corrigan v. Germany, 43 Fed. Appx. 139 (9th Cir. July 22, 2002); (4) Corrigan v. Employment Security Dept., 99 Wn. App. 1035 (2000), rev. denied, 141 Wn.2d 1022 (2000); (5) Corrigan v. Imaginetics Inc., 2000 WL 194656 (Wn. App. Feb. 14, 2000), rev. denied, 143 Wn.2d 1010 (2001), cert. denied, 534 U.S. 1020 (2001); (6) Corrigan v. Allstate Ins. Co., 126 Wn.2d 1013 (1995), cert. denied, 516 U.S. 920 (1995); (7) Corrigan v. Tompkins, 67 Wn. App. 475 (1992), rev. denied, 121 Wn.2d 1003 (1993), cert. denied, 510 U.S. 842 (1993).

consideration no earlier than the third Friday after filing. See Local Civil Rule 7(d)(3). In responding to this motion, Plaintiff may offer evidence relevant to determining an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof. Plaintiff may also offer evidence (such as a court order) to support his contention that his criminal conviction and sentence were stayed at the time that his arrest warrant issued in December 2004.

Conclusion

The Adams County Defendants' motion for summary judgment is GRANTED. All claims asserted by Plaintiff against Adams County, Sheriff D. Barger, and "Unknown County of Adams Official" are DISMISSED.

The Court GRANTS IN PART the Adams County Defendants' motion for Rule 11 sanctions. The Court finds that Plaintiff violated Rule I I by filing frivolous claims against the Adams County Defendants without reasonable inquiry. The Court reserves ruling on the type or amount of sanctions to be imposed. Within thirty days of the date of this Order, the Adams County Defendants are directed to file a motion documenting the reasonable attorneys' fees that they incurred as a direct result of the Rule 11 violations. In responding to this motion, Plaintiff may offer

evidence relevant to determining an appropriate sanction, including but not limited to his financial status and his legal training or lack thereof.

The clerk is directed to provide copies of this order to Plaintiff and to all counsel of record. Dated: August 2, 2006

s/Marsha J. Pechman

Marsha J. Pechman

United States District Judge

ORDER ON ADAMS COUNTY DEFENDANTS' MOTION SEEKING SPECIFIC SANCTIONS pp. 6-7

Plaintiff also indicates in his response that he makes about $55,000 per year and that he has no formal legal training. However, the Court noted in its August 2nd order that it appeared that Plaintiff was not an inexperienced pro se litigant, citing more than a dozen civil cases that a "John L. Corrigan" had brought in federal and state court. (Dkt. No. 23 at 16 and n.4). Plaintiff has not disputed that he was the "John L. Corrigan" who brought any of those cases.

Defendants have noted that Plaintiff was previously sanctioned under Rule 11 in a civil action he brought in the U.S. District Court for Eastern District of Washington to challenge the circumstances surrounding his 2003 arrest and conviction. However, that sanction was later reversed by the Ninth Circuit because the defendant did not comply with the "safe harbor" requirements of Rule 11. See Corrigan v. Dale, 162 Fed Appx. 784 (9th Cir. Jan. 6, 2006).

D. Appropriate Sanction

The Court finds that a significant monetary sanction is warranted in this case to

deter Plaintiff from filing frivolous claims in the future. Notably, Plaintiff filed his frivolous claims against the Adams County Defendants on the heels of the dismissal of a similar civil suit in the Eastern District of

Washington against some of the same defendants. Plaintiff made his claims against the Adams County Defendants without reasonable inquiry or basis in law. Although Plaintiff does not have formal legal training, he is a fairly prolific pro se litigant and a modest sanction would be unlikely to deter him from filing frivolous claims in the future. Plaintiffs annual income of $55,000 also suggests that his financial resources are not insubstantial and that a significant monetary sanction is necessary.

As noted above, the primary purpose of Rule 11 sanctions is deterrence, not compensation. Rule 11 sanctions must be "limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated." Rule 11(c)(2). Here, Defendants provide little basis

for the Court to find that a sanction as high as $18,000 is needed to deter Plaintiff from filing frivolous claims in the future.

In addition, as discussed earlier, Defendants' request for fees and expenses omits some key details. From the billing

records provided by Defendants, the Court does not doubt that Defendants reasonably incurred well over $10,000 in fees and expenses in having to defend against Plaintiffs' claims — expenses that were directly incurred as a result of Plaintiffs' decision to file frivolous claims against the Adams County Defendants. However, the Court cannot determine a reasonable amount of fees and expenses with precision, given Defendants' failure to identify which attorney or paralegal performed which tasks, to specify which tasks were performed by an attorney and which tasks were performed by a paralegal, and to describe the expenses claimed in greater detail. While Defendants could conceivably correct these omissions through a supplemental filing, such an additional step is not warranted because the $18,000 figure requested by Defendants appears to exceed the amount of sanctions warranted to deter future frivolous filings by Plaintiff.

Under the circumstances presented here and taking into account Plaintiffs annual income of $55,000, the Court finds that a $10,000 monetary sanction should be sufficient to deter Plaintiff from filing frivolous claims in the future. Plaintiff is ordered to pay this sanction to Defendant Adams County within 30 days of the date of this Order. The Court recognizes that the Advisory Committee Notes

to the 1993 amendments to Rule 11 indicate that "if a monetary sanction is imposed, it should ordinarily be paid into court as a penalty." However, the Court finds that it would be appropriate in this case to order Plaintiff to pay this sanction to Adams County to help ensure that county taxpayers are not forced to bear the full brunt of paying for Plaintiffs frivolous claims in this case.

Conclusion

For the reasons stated above, the Court GRANTS in part and DENIES in part the Adams County Defendants' motion for specific sanctions. The Court finds that a monetary sanction of $ 10,000, rather than the $18,070.14 in sanctions requested by Defendants, should be sufficient to deter Plaintiff from filing frivolous claims in the future. Plaintiff is ORDERED to pay this $10,000 sanction to Adams County within 30 days of the date of this Order.

The Clerk is directed to send copies of this order to Plaintiff and to all counsel of record.

Dated: October 27, 2006

s/Marsha J. Pechman

United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

John L. Corrigan Plaintiff, v. Unknown King County Official #1, et.al.	NO. CV 05-1727-P Defendant Adams County's Motion for Rule 11 Sanctions & Memorandum of Authorities in Support Thereof

Defendant Adams County and its employees move the Court for an Order of sanctions against Plaintiff Corrigan.

This Motion is made pursuant to Fed.R.Civ.P. 11, the accompanying Memorandum of Authorities in Support of Motion for Sanctions, and the Affidavit of counsel certifying Defendant has complied with the 21 -day safe harbor notice as required by Fed.R.Civ.P. 11.

Defendant Adams County and its employees respectfully requests that the Court grant its motion for sanctions against Plaintiff Corrigan.

I. Basis

Defendant Adams County and its employees have moved this Court for an award of sanctions against Plaintiff for violating Fed.R.Civ.P. 11 by submitting a signed

pleading that is not well grounded in fact, is not supported by existing law, and is imposed for an improper purpose, such as to harass and cause unnecessary litigation costs for Adams County and its employees.

II. Statement of Facts

On February 6, 2003, the Plaintiff, John L. Corrigan ("Corrigan) was driving on Interstate 90 in the Eastern District of Washington when he was stopped for speeding. *See facts set forth in Summary Judgment Order of the U.S. Dist. Ct. E.D. WA., attached as Exhibit 1.* " Under the state law of Washington, Corrigan was obligated to sign his notice of infraction. *See R. C. W. 46.61.021(3). Id.* He refused to sip the notice. Id. Willful refusal to sign a notice of infraction is a criminal misdemeanor. R.C.W. 46.61.022. Corrigan was advised that if he did not sign the traffic infraction, he would receive a criminal citation and he would be arrested. Despite this warning, Corrigan refused to sign and was put under arrest. *See also, Washington Uniform Criminal Complaint attached hereto as Exhibit "2.* "

On May 9, 2003, a jury trial was held and the jury returned a guilty verdict on the charge that Corrigan willfully refused to sign his traffic citation in violation of R.C.W. 46.61.22. *See Verdict Form attached as Exhibit "3.* "

District Judge Hille sentenced him to 90 days in jail with 85 days suspended. Additionally, Judge Hille fined him $1,000.00 with $525.00 suspended. *See attached as Exhibit "4.* - Judge Hille ordered the Adams County sheriff to commit Corrigan to serve his sentence. Mr. Corrigan had 90 days from the imposition of the sentence to serve his five days in jail. *See attached as Exhibit "5.* " In a separate civil proceeding, Corrigan was also convicted of the civil infraction of speeding. *See attached as Exhibit "6.* "

Corrigan filed an appeal with the superior court of Adams County for his civil infraction of speeding. On November 7, 2003, the superior court affirmed the district court's determination that Corrigan was in fact speeding. *See attached as Exhibit "7* " Corrigan then asked the Washington State Supreme Court to review the trial court's determination. *See attached as Exhibit "8.* " On February 26, 2004, the State Supreme Court denied review of the speeding conviction. *See attached as Exhibit "9.* " Corrigan took his quest to the United States Supreme Court with a petition asserting the civil infraction procedures were unconstitutional and deprived due process. The U.S. Supreme Court denied review of his petition. *See attached as Exhibit "10.*

In addition, Corrigan appealed his criminal conviction for failure to sign the

notice of infraction with the superior court for Adams County. *See attached as Exhibit "11.* " The superior court affirmed the judgment and sentence of the district court in a memorandum decision, dated November 18, 2003. *See attached as Exhibit "12.* " After the superior court's memorandum decision, Corrigan filed a notice of discretionary review with the court of appeals of the State of Washington, division III. The matter was assigned to a court commissioner, who denied Corrigan's request for discretionary review on March 16, 2004. *See attached as Exhibit "13.* " On April 5, 2004, Corrigan elected to file a motion to modify commissioner's ruling. The appellate court declined to modify the ruling. *See attached as Exhibit "14.* " The superior court remanded the case back to the district court for imposition of Corrigan's sentence. On May 7, 2004, Corrigan filed a motion for discretionary review with the Washington State Supreme Court. On August 12, 2004, the State Supreme Court denied his motion. *See attached as Exhibit "15.* " On November 3, 2004, the State Supreme Court denied Corrigan's motion to modify its ruling. *See attached as Exhibit "16.* " On December 8, 2004, Corrigan filed a

> petition for writ of habeas corpus with the superior court in Adams County. The superior court denied his petition on December 9, 2004. *See attached as Exhibit "17.* " At that point, Corrigan petitioned the United States Supreme Court, asserting that his conviction for failing to sign the notice of infraction was in violation of the Fourth, Fifth, and Eighth Amendments of the U.S. Constitution. His petition fora writ of certiorari was denied. *See attached as Exhibit "18.* "

Besides filing his state actions, Corrigan filed a civil action in the United States District Court Eastern District of Washington, seeking damages pursuant to 42 U.S.C. section 1983 and the laws of Washington State. *See Complaint, attached at Exhibit "19.* " In the complaint, Corrigan alleged a cause of action to "redress the deprivation by the defendants of rights secured to the plaintiff by the Constitution and laws of the United States and the State of Washington." Id. Corrigan argued that his arrest was unlawful and without probable cause, that he suffered false imprisonment, malicious prosecution, and abuse of process. Id. He asserted that his action arose out of the Fourth, Sixth, and Fourteenth Amendments to the U. S. Constitution and Title 42 of the United States

Code, § 1983 and the laws of Washington. Id. This action was brought against Adams County, the troopers involved in the arrest, the prosecutor, and the district court judge for Adams County.

The federal district court granted WSP Trooper Dale and Trooper Burt's motion for summary judgment with respect to the federal claims of false arrest and false imprisonment. See Exhibit "]. " The court also granted the summary judgment motion brought by Judge Hille, Deputy Prosecuting Attorney Scudder, Sheriff Barger, and Adams County with respect to the federal claims. Id. The motion brought by all defendants concerning Corrigan's state law claims was granted, and his claims under state law were dismissed with prejudice. Id. This decision was recently upheld by the Ninth Circuit Court of Appeals. *See attached at Exhibit "20."*

Even in the wake of every court denying his appeals and motions, Corrigan failed to serve his sentence. As a result, the Adams County Court issued a show cause order requiring Mr. Corrigan to appear and explain why he had not done so. *See attached at Exhibit -21.* " Mr. Corrigan failed to appear for the show cause hearing, and a warrant was signed on December 1, 2004, for Mr. Corrigan's arrest. *See attached at Exhibit* "22. " On April 10, 2005, King County Deputy Sheriff Officers

advised Corrigan that they had a warrant for his arrest. After being arrested, Corrigan served two days in King County Jail. Mr. Corrigan then voluntarily appeared in Adams County to complete the three days of his five-day sentence. After serving his sentence, Corrigan filed the complaint in this action alleging deprivation of his constitutional rights, and rights under Washington statues.

As noted above, a lawful warrant was issued by the court based on Mr. Corrigan's conviction. Adams County acted on the warrant by forwarding it to King County, where Mr. Corrigan resided. There is no legal or factual basis for Mr. Corrigan's claims against Adams County for merely disseminating a valid warrant, and therefore, this action should be dismissed.

Moreover, this action is nothing more than a repeat of the prior claims brought by Corrigan, which have all been reviewed and denied. As noted, the arrest and convictions of Corrigan have all been determined to be lawful. Likewise, the warrant and incarceration of Corrigan based on these convictions are also lawful. The warrant was issued by Judge Joshua Grant, and the arrest for failure to serve the 5-day sentence was made by King County. There are no claims remaining against Adams County which have not been previously addressed and determined

to be lawful.

III. Adams County Is Entitled to Receive Attorneys' Fees and Costs Under F.R.C.P. 11.

Civil Rule 11 provides for the imposition of sanctions when a pleading is frivolous, legally unreasonable, without factual foundation, or is brought for an improper purpose. Fed.R.Civ.P. 11(b)(1), (2), (3). *Warren v. Guelker*, 29 F.3d 1386 (1994), *citing Conn v. Borjorquez*, 967 F.2d 1418, 1420 (9th Cir. 1992); *Operating Eng'rs Pension Trust v. A-C Co.*, 859 F.2d 1336, 1344 (9th Cir. 1988).

A pro se plaintiff is subject to the provisions of Rule 11. *Id.; see Wright v. Tackett*, 39 F.3d 155 (1994), cert. den. 513 U.S. 1150; *Mayfield v. Klevenhagien*, 941 F.2d 346 (5th Cir. 1991); *Patterson v. Aiken*, 841 F.2d 386 (11th Cir. 1988); *see also* Committee Note, 97 F.R.D. at 199. Once Rule 11 is found to be violated, judges are required to impose sanctions. *Business Guide, Inc. v. Chromatic Communications Enter., Inc.*, 892 F.2d 802, 808 (9th Cir. 1989). The Rule then defers to a judge's discretion in choosing an appropriate sanction. Id.

In reviewing Rule 11 and the alleged misconduct, a court is to impose an objective standard of conduct. *Id., citing In re Disciplinary Action Against Mooney*, 841 F.2d

1003, 1005 (9th Cir. 1988)("The requirements of Rule 11 are measured by an objective standard. Subjective good faith is not relevant."); *see also Schwarzer, Sanctions Under the New Federal Rule 11 –A Closer Look*, 104 F.R.D. 181, 187 (1985)("There is no room for a pure heart, empty head defense under Rule 11"). Sanctions are imposed for violation of Rule 11 to the extent it is sufficient to deter repetition of the improper conduct. Fed.R.Civ.P. 11(c)(2).

In this case, Plaintiff has brought a claim against Adams County after Plaintiff was arrested. Plaintiff contends that this conduct somehow violated his constitutional rights. However, Adams County Sheriff's Department's involvement was the entering of the warrant into the State database. The prosecuting officer, who has not been named, followed up on the status of the warrant. These actions violated none of Plaintiff s constitutional rights. Moreover, in acting upon a valid warrant, Adams County personnel are immune from the cause of action asserted. *Coverdell v. Dep't of Social and Health Servs.*, 834 F.2d 758 (9th Cir. 1987). Furthermore, because Plaintiff s conviction has been found valid, no constitutional law claim can be asserted for Defendants acting upon an arrest warrant following the conviction. *Cabrera v. City of Huntington Park*, 159 F.3d 374 (9th Cir.

1998). To the extent Plaintiff asserts that his arrest and conviction were somehow invalid, these issues have been addressed and resolved against Plaintiff numerous times. Plaintiffs claims are frivolous, and Plaintiff has failed to establish any factual or legal basis for his Complaint, which has been previously litigated.(See Exhibits "1," "19," and "20.") Plaintiff seems likely to continue filing actions unless he is appropriately sanctioned.

Though a Court is to take into account a plaintiff's pro se status when determining whether a Complaint is reasonable, Plaintiff Corrigan's actions and conduct in this case more than merit sanctions. *Warren,* 29 F.3d at 1390; *Harris v. Heinrich*, 919 F.2d 1515, 1516 (11th Cir. 1990); *Kurkowski v. Volcker*, 819 F.2d 201, 204 (8th Cir. 1987). The Court in *Kurkowski* held while "we recognize that pro se complaints are read liberally. . . they still may be frivolous if filed in the face of previous dismissals involving the exact same parties under the same legal theories." *Id.*

As denoted in the above-cited cases, Plaintiff Corrigan has filed this action, which is based on the same facts and theories as the action previously filed and dismissed in the Eastern District Federal Court. (See Order on Summary Judgment attached as Exhibit "1" and Plaintiff's prior Complaint at Exhibit "19"). Judge Van Sickle's decision was upheld by the

Ninth Circuit Court of Appeals. (See attached Decision at Exhibit "20").[5]

It is interesting to note the Decision attached as Exhibit "20" found Plaintiff Corrigan's conduct frivolous against Adams County District Judge Hille, but overruled Rule 11 sanctions only on the basis Adams County did not comply with the Rule 11 safe harbor provisions.

IV. Conclusion

Plaintiff Corrigan's Complaint is frivolous and imposed for an improper purpose, as it is filed in the face of previous dismissals involving nearly identical parties under nearly identical legal theories. Plaintiff's conduct will only continue to harass Adams County and its employees unless this Court enters sanctions appropriate to deter similar conduct. Adams County respectfully requests that its Motion for Sanctions of Attorney Fees and Costs be granted.

Respectfully submitted this 28th day of April, 2006.

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[5] The attached Decision is not provided as precedential value, but merely as an exhibit to show the Court affirmed the dismissal of Plaintiffs previous actions against Adams County and its employees on the same theories.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

John L. Corrigan) NO. CV 07-227-RHW
Plaintiff,)
Vs.) Order Denying Plaintiff's
Trooper Dale, et.al.) Motion to Void the
Defendants) Judgment

Before the Court is Plaintiff's Motion to Void the Judgment (Ct. Rec. 81).The motion was heard without oral argument.

On April 14, 2008, the Court granted Defendants' Motion for Summary Judgment, found that reasonable attorneys' fees were warranted, and requested that Defendants submit briefing to the Court on the amount of reasonable fees expended in bringing their motion and defending this action. On June 2, 2008, the Court awarded $10,822.51 in reasonable attorneys' fees. Judgment was not entered. Plaintiff appealed and the Ninth Circuit dismissed the appeal for lack of jurisdiction.

Plaintiff now moves the Court to void the judgment pursuant to Fed. R. Civ. P. 60. Plaintiff argues that because the Court held that Plaintiff failed to properly serve Defendants, the Court was required to dismiss the action without prejudice.

The personal jurisdictional requirement is waivable. *Dow Chemical Co. v. Calderon*, 422 F.3d 827, 831 (9th Cir. 2005). Thus, Fed. R. Civ. P. 4(m) does not preclude the Court from addressing all of Defendant's argument in favor of summary judgment. Even though the Court found that service was defective, it also found that Plaintiff's complaint was barred by the statute of limitations and the doctrines of collateral estoppel, claim and issue preclusion, and absolute immunity, and by Plaintiff's failure to show that his conviction and sentence had been invalidated as required by *Heck v. Humphrey*, 512 U.S. 477 (1994).

Accordingly, **IT IS HEREBY ORDERED:**
1. Plaintiff's Motion to Void the Judgment (Ct. Rec. 81) is **DENIED**.
2. The District Court Executive is directed to enter judgment in favor of Defendants in the amount of $10,822.51 and against Plaintiff.
IT IS SO ORDERED. The District Court Executive is directed to enter this Order and forward copies to Plaintiff and counsel.
DATED this 20th day of November, 2008.

S/ Robert H. Whaley
ROBERT H. WHALEY
Chief United States District Judge
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

EXCERPT FROM Order Denying Plaintiff's Motion for Reconsideration – No. CV 08-333

. . . Further, although the Court must view the pro se Complaint in Plaintiff's favor and less stringently than those drawn by counsel, the Complaint must still state a valid cause of action - the Court concludes, as a matter of law, that Plaintiff cannot assert an abuse of process claim arising out of Rule 11 motions filed in prior lawsuits.

The Court concludes *Cohen v. Lupo* is not to the contrary. 927 F.2d 363 (8th Cir. 1991) (allowing a subsequent malicious prosecution cause of action). An abuse of process claim alleges the misuse or misapplication of the legal process after the initial of the lawsuit. *Saldivar v. Momah*, 145 Wn. Ap. 365 (2008). Accordingly, in the underlying lawsuits, Plaintiff should have sought leave to file an abuse of process counterclaim pertaining to his allegations that Defendants and defense counsel misused Rule 11.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

John L. Corrigan, Plaintiff - Appellant,
v.
Darrin Jenks, King County Sergeant; et al., Defendants.

No. 07-35584

DC # CV-06-01710-P

Washington (Seattle)

ORDER

Before: WALLACE, TROTT, and RYMER, Circuit Judges

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

The petition for rehearing en banc is denied.

[Submitted March 13, 2009]

Georgene M. Vairo
Professor of Law and William M. Rains Fellow

Educational and Professional Background

BA, Sweet Briar College, Phi Beta Kappa MEd, with distinction, University of Virginia JD, cum laude, Fordham University

Georgene Vairo served as the first law clerk to the Honorable Joseph M. McLaughlin, United States Court of Appeals for the Second Circuit when he served on the District Court for the Eastern District of New York. She also was an associate specializing in antitrust law at the New York law firm of Skadden, Arps, Slate, Meagher & Flom. From 1982-1995, she was a member of the faculty of Fordham Law School. During her tenure, she served as an associate dean (1987-1995) and was appointed to the Leonard F. Manning Distinguished Chair (1994). Vairo joined Loyola's faculty in 1995.

Professional Memberships and Activities

Member of the Board of Editors, *Moore's Federal Practice*
Member of the Board of Overseers, Rand Institute for Civil Justice

Chairperson of the Dalkon Shield Claimants Trust (1987-2000)
Member, American Law Institute
Expert in several major mass tort litigations
Columnist on forum selection problems for the **National Law Journal**
Columnist for the Civil Discourse Column of the **Los Angeles Daily Journal**
Monthly Contributor of **LexisNexis Expert Commentaries**

See this list and other accomplishments at http://www.lls.edu/academics/faculty/vairo.html